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Trust, Bruce McGimsey, Jerry
McGimsey, Sharon McGimsey and
Johnny Clark

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)
USA COMMERCIAL MORTGAGE COMPANY,)
Debtor.)
USA CAPITAL REALTY ADVISORS, LLC,)
Debtor.)
USA CAPITAL DIVERSIFIED TRUST DEED)
FUND, LLC,)
Debtor.)
USA CAPITAL FIRST TRUST DEED)
FUND, LLC,)
Debtor.)
USA SECURITIES, LLC,)
Debtor.)

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11

RESPONSE TO OMNIBUS
OBJECTION OF THE OFFICIAL
COMMITTEE OF EQUITY
SECURITY HOLDERS OF USA
CAPITAL DIVERSIFIED TRUST
DEED FUND CLAIMS ON
EQUITY MISFILED AS CREDITOR
CLAIMS BY JOHNNY CLARK

Date: 01/03/07
Time: 9:30 a.m.

Affects:)
☐ All Debtors)
☐ USA Commercial Mortgage Company)
☐ USA Securities, LLC)
☐ USA Capital Realty Advisors, LLC)
☒ USA Capital Diversified Trust Deed)
Fund, LLC)
☐ USA First Trust Deed Fund, LLC)

COMES NOW Johnny Clark, by and through his attorney, William L. McGimsey, Esq., and
in response to the objection to the Creditor's Claim filed herein by the Official Committee of Equity

1 Security Holders of USA Capital Diversified Trust Deed Fund, LLC, respectfully shows as follows.

2 The objection is apparently based on two grounds. The first is the fact that the Creditor's
3 claim is allegedly duplicative of the Proof of Interest by this Creditor and Interest Holder. In fact, this
4 Creditor has filed a Proof of Interest because this Creditor is in fact an Interest Holder. However, in
5 addition, this Creditor is an unsecured creditor and has therefore filed a Proof of Claim as an
6 unsecured creditor.

7 This Creditor purchased his interest in the Debtor pursuant to Subscription Agreements, all
8 of which provided that the terms of the agreement were as set forth in the prospectus of USA Capital
9 Diversified Trust Deed Fund, LLC. In that prospectus, the Debtor contracted and agreed that all
10 loans would be secured by first deeds of trust that encumber the real property and that the maximum
11 loan to value ratio would be 75% for residential subdivisions and commercial property and 60% for
12 unimproved loans. The agreement also provided that no loans would be made to the Debtor's
13 manager or any of its affiliates. These provisions in the case of USA Capital Diversified Trust Deed
14 Fund, LLC were violated in that loans were made to affiliates which were totally unsecured. Thus,
15 this Creditor believes he can prove that the Debtor has been guilty of breach of its contract and has
16 been defrauded by the Debtor giving rise to this Creditor's claim.

17 The objecting creditor has cited the case of *In re Betacom of Phoenix, Inc.*, 240 F.3d 823,
18 829 (9th Cir. 2001), for the proposition that this Creditor's claim must be subordinated because it
19 arose out of the purchase and sale of a security. In the *Betacom* case, the court did indicate that under
20 certain circumstances, a creditor's claim which arose out of the purchase and sale of a security or
21 equity position in the debtor should be subordinated to other more conventional creditors' claims
22 which did not arise out of the purchase of the sale of an equity interest in the debtor. However, the
23 court did not make a blanket ruling that such creditors' claims as the one in question here would be
24 automatically subordinated to all other creditors' claims but rather would be subordinated to creditors
25 who extended credit to the debtor on the basis of the equity in the debtor.

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28 In any event, even if this claim should be subordinated to other creditors' claims that is not

1 grounds for a denial of the claim.

2 Respectfully submitted,

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4 s// William L. McGimsey
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8 Attorney for Johnny Clark
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